

THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA

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GORDON ROY PARKER, a.k.a. Ray Gordon, d/b/a : Snodgrass Publishing Group, : 4247 Locust Street, #806 : Philadelphia, PA 19104 CASE NO.: 1) Smc157 Misc Case Petitioner, V. Comcast High-Speed Internet, 1500 Market Street, Philadelphia, PA 19102, and John Doe, a/k/a Sandworm77@comcast.net, a/k/a Paul Ross, 310 Tahiti : Way, Marina Del Ray, CA, 90292-6789 Respondent

<u>ORDER</u>

AND NOW, on this _____ day of 2005, in consideration of Petitioner's Petition To Perpetuate Testimony Pursuant To Federal Rule 27 and accompanying Memorandum, the order is GRANTED as follows:

- 1. Petitioner shall be permitted to perpetuate the testimony of Comcast High-Speed Internet through interrogatories directed to and subpoena of its Custodian of Records or other designated corporate representative.
- 2. Testimony and any related subpoenas shall be limited to information concerning the identity, IP addresses during the times in controversy, or any other information relevant to identifying the name, address, and contact information of the author of the "John Doe" USENET internet message and e-mails from Sandworm77@comcast.net, cited by Petitioner, as well as the actual messages themselves, or any other information vital to obtaining the author's identity.

SO ORDERED.

J.		

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IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA



GORDON ROY PARKER, a.k.a. Ray Gordon, d/b/a Snodgrass Publishing Group,

4247 Locust Street, #806 Philadelphia, PA 19104

Petitioner,

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Comcast High-Speed Internet, 1500 Market Street, Philadelphia, PA 19102, and John Doe, a/k/a Sandworm77@comcast.net, a/k/a Paul Ross, 310 Tahiti Way, Marina Del Ray, CA, 90292-6789

V.

Respondent

CASE NO .: 1) Smc (57

Miscellaneous Case

PETITION TO PERPETUATE TESTIMONY PURSUANT TO FEDERAL RULE 27

Petitioner, Gordon Roy Parker, in the above-styled action, hereby seeks a court order to perpetuate, the testimony of the Custodian of Records for Comcast High-Speed Internet ("Comcast"), and in support thereof, states and avers the following:

PARTIES AND JURISDICTION

- Petitioner Gordon Roy Parker is a resident of Philadelphia, Pennsylvania who 1. is domiciled and currently resides at the address listed for him in the caption. He is the owner of Snodgrass Publishing Group, a Pennsylvania sole proprietorship.
- Respondent Comcast High-Speed Internet is a "cable modem" internet 2. provider who does business in Philadelphia at its offices located at 1500 Market Street, Philadelphia, PA 19102, and may be served at that address. Comcast is therefore subject to the jurisdiction of this Court for this petition.
- Respondent John Doe is believed to be Paul Ross, whose last known address to 3. Petitioner is 310 Tahiti Way, Marina Del Ray, CA, 90292-6789. It should be noted that while Mr. Ross is listed as a Respondent, that is only because he is the "expected adversary" in the

future litigation. However, there is no way to perform any diligence that would prove he was the author of the message without conducting this discovery through Comcast, because anyone can claim to be anyone in an internet message; only the actual source of the message (the internet provider, or ISP) can verify this. It is theoretically possible, however unlikely, that the Comcast account is not owned by Mr. Ross. Mr. Ross is currently a defendant in <u>Parker v. Learn The Skills Corp. et al.</u>, E.D.Pa. #05-cv-2752.

4. There are no other known expected parties to this action at this time, other than *possibly* Comcast, in the event that they allow future defamation suits from this individual after having been put on notice through an abuse report regarding the original message.¹

STATEMENT OF JURISDICTION

- 5. Jurisdiction over this Petition is conferred due to the possibility (and near-certainty) of diversity jurisdiction among the parties, and the amount in controversy being greater than \$150,000.00 US.²
- 6. Jurisdiction over this Petition is further conferred on this court under 28 USCS § 1331, due to the likely existence of federal questions, including but not limited to RICO and the Lanham Act, if in fact the Doe is Mr. Ross, and even if it is not.
- 7. Because Comcast High-Speed Internet provides service through cable modems, jurisdiction for this Petition is conferred by Cable Act (47 USC §551(a)), which requires a court order to perpetuate the release of subscriber information.

While the Third Circuit has upheld ISP immunity for publisher liability for defamation under 47 USC §230, a California state appellate court has held that §230 does not protect them from liability as a distributor, or republisher of defamation if they knew or had reason to know that the message(s) in controversy were defamatory. This case. Barrett v. Rosenthal, (Cal. S.Ct. #S122953 and Appellate Court First District, Division Two. #A096451), has underlying facts which are almost identical to this one in that it involves a USENET republication of a defamatory email message. If this ruling is upheld by the US Supreme Court, it would confer absolute standing on Petitioner to file against the Doe and any republishers subject to notice liability; absent this ruling being overturned, it is an issue of first impression and/or split authority which also gives Petitioner standing.

² Petitioner has reason to believe that the Doe, regardless of whether or not it is Mr. Ross, resides in California, as the headers of the message indicate that it originated in California.

BACKGROUND

- 8. Petitioner incorporates by reference, as if fully stated verbatim herein, the entire contents of paragraphs 1-7 above.
- 9. On July 27, 2005, Respondent John Doe posted to the "USENET" message board system on the internet, in the group alt.seduction fast, the following message concerning petitioner (defamatory statements and IP address of the author highlighted in **bold**):

Path: twister.nyc.rr.com!cyclone.rdc-

nyc.rr.com!news.maxwcll.syr.edu!newscon02.news.prodigy.com!newscon06.news.prodigy.com!prodigy.net!border1.nntp.dca.giganews.com!nntp.giganews.com!local01.nntp.dca.giganews.com!nntp.comcast.com!news.comcast.com.POSTED!not-for-mail

NNTP-Posting-Date: Wed, 27 Jul 2005 01:04:43 -0500 User-Agent: Microsoft-Entourage/10.1.6.040913.0

Date: Tue, 26 Jul 2005 23:04:40 -0700 Subject: Re: "Jack Ryan" never existed From: Ross <notmyemail@address.com>

Newsgroups: alt.seduction.fast

Message-ID: <BF0C7208.15265%notmyemail@address.com> References: <osyFe.3500\$Ow4.1455136@twister.nyc.rr.com>

<INF1GX5238560.4338078704@reece.net.au>

Mime-version: 1.0

Content-type: text/plain; charset="US-ASCII"

Content-transfer-encoding: 7bit

Lines: 102

NNTP-Posting-Host: 24.126.247.39

X-Trace: sv3-

QqWENF9YIJplFLcSp+5+b6maQm6rEiPuZxHEDPL63t8SnGy+Zxzx0YCiXcQ6sV8+LHFL6pyXmyhn9N0!1c00u515yyp2uGexlcBROdhxcvXSM9WKYNcV5rXQtZcTNlK78klC4svJ/A

DKIaiygI4GPwqzL6Rs!m4k11hE= X-Complaints-To: abuse@comcast.net

X-DMCA-Complaints-To: dmca@comcast.net

X-Abuse-and-DMCA-Info: Please be sure to forward a copy of ALL headers

X-Abuse-and-DMCA-Info: Otherwise we will be unable to process your complaint properly

X-Postfilter: 1.3.31

Xref: cyclone.rdc-nyc.rr.com alt.seduction.fast:206072

in article INF1GX5238560.4338078704@reece.net.au, EditorialStaff at Use-Author-Address-Header@[127.1] wrote on 7/26/05 7:24 PM:

I swear to Jeri; if Mr. Parker DOES sue me, he will be reading this piece of sick, twisted, hateful email that he sent, into the record when I take his deposition.

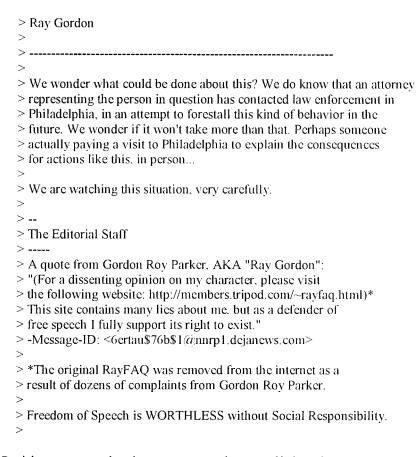
Ray, you are sick, twisted, evil bastard and I am going to clean your clock in court.

RJ

> Gordon Roy Parker wrote:

>>

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>> He was just a convenient diversion created by someone
>> who didn't want to take credits for the threats that
>> were made under that name.
> We received an interesting email a few days ago, from someone
> who was connected to Dr. Ryan, and with that person's permission,
> we post it here, so that everyone will know just what Mr. Parker
> is attempting to do here.
> X-Apparently-To: jerisnow@****.com
> X-Date: Tue, 21 June 2005 01:32:39 -0500
> X-Originating-IP: [24.193.236.213]
> Return-Path: <ray@cybersheet.com>
> Authentication-Results: mta221.mail.dcn****.com
> from=twister.nyc.rr.com 1119348282 24.193.236.213
> (Tue, 21 Jun 2005 06:04:42 EDT)
> Received: from 24.193,236,213 by mta221.mail.dcn.****.com with
> SMTP; Tue, 26 Jul 2005 18:32:39 -0700
> Received: from ([24.193.236.213]) by
> omta03sl.mx.bigpond.com with SMTP id
   <20050727013237.WFYU21373.omta03sl.mx.bigpond.com@workshop>:
> Wed, 27 Jul 2005 01:32:37 +0000
> To: jerisnow@****.com
> From: "Ray Gordon" <ray(a)cybersheet.com>
> Date: 21 Jun 2005 01:33:10 -0000
> Message-ID: <DGOJ7MAE38560.3980324074@twister.nyc.rr.com>
> Subject: You had better watch out BITCH.....
>
> I'm tired of all the men who are attacking me in your name
> and with your approval, and I am going to fix your CUNT ass soon.
> You had better watch out, because I am going to come and find you.
> and show you what I think of you and your dead husband.
> Georgia is only a plane ride away......
> You think you can get away with harassing me, threatening me and
> hiding behind that dead asshole husband of yours, but you
> can't. Your husband was a rapist, and you are nothing but a SLUT for
> having married a player like him. Your actions show your poor
> judgment picking men, and they reveal you to be a PATHETIC little
> SLUT the world would definitely be better off without.
> If I ever hear another word about "Jack Ryan" ever again, I am
> going to shut up that mouth of yours, and the pussy mouth of everyone
> who you have gotten to attack me. He's DEAD, rotting in a grave.
> and the worms are eating up all you love. That make you feel good
> CUNT? I hope so.
> Women like you NEVER find good men. All SLUTS like you can get are
> players and rapists. There's a reason for that.
> I am hereby officially warning you that any more attacks on me will
> cause great harm to come down on you. You have been warned. Cease and
> Desist IMMEDIATELY....
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- 10. Petitioner avers that he never sent the e-mail that the Doe accused him of sending in his posting, and that the alleged "e-mail" was forged.
- 11. Petitioner avers that at the time of publication, the Doe either knew or should have known that the e-mail was a forgery.
- 12. Petitioner avers that the Doe acted with common-law malice (malicious intent) towards Petitioner, for the express purposes of harming his personal and business reputation (including but not limited to ensuring that the message would be viewable through search engine USENET archives), and for the purpose of inciting others to harm him by creating the lie that Petitioner had threatened one "Jeri Ryan."
- 13. There is strong evidence to indicate that "Jeri Ryan" never even existed, and in fact was created several years ago in order to "play victim" to Petitioner, for the purpose of cloaking a plan to harm or kill Petitioner so that any violence could be blamed on retaliation by a

"loose cannon" against Petitioner, who has indeed received death threats from other ASF users, one of whom has stated publicly that he is a fan of Mr. Ross, since this message appeared. Mr. Ross is well aware of his following and the willingness of many of his followers to act upon his words.

GROUNDS FOR PREFILING DISCOVERY

- 14. Petitioner incorporates by reference, as if fully stated verbatim herein, the entire contents of paragraphs 1-13 above.
- 15. Expectation of action pursuant to FRCP 27(a)(1)(1): Petitioner avers that he expects to be a party to an action cognizable in federal court of the United States but is presently unable to bring it or cause it to be brought. This is so because he cannot be certain of the identity of the author of this message, or which courts would have jurisdiction over his claims, without the testimony being sought in this Petition. Since e-mail addresses can be "spoofed" (forged), and anyone can sign any name to a posting or e-mail, the only way to truly verify the identity of the author is through ISP discovery. This is standard operating procedure in internet cases.
- FRCP 27(a)(1)(2): Petitioner avers that the expected action in this case will be a libel lawsuit, against the John Doe, filed in the Doe's home jurisdiction (believed to be California), or in Pennsylvania if applicable, for defamation and tortious interference.
 - 17. <u>Facts petitioner seeks to establish and reasons for the need for prefiling</u> discovery pursuant to FRCP 27(a)(1)(3):

Petitioner seeks to perpetuate this testimony for the purpose of establishing the identity of the author of the message set forth in paragraph 9) above, and to establish the fact that it was posted through Comcast, as the header information indicates.³ Specifically, Petitioner seeks to discover which Comcast subscriber was using the IP address of <u>24.126.247.39</u> at the

³ The "NTTP Posting Host: " line is a generally reliable indicator of the author's IP address.

time the message was posted (Tue, 26 Jul 2005 23:04:40 -0700), and he seeks to establish the

identity of the user Sandworm77@comcast.net during the same period of time to the present.

The reason Petitioner seeks this discovery is that there is no guarantee that Comcast will retain

the records. As its retention policy (http://www.comcast.net/privacy/#information) clearly states,

a Comcast subscriber can terminate service at any time and cause the evidence to be destroyed

long before the statute of limitations has run:

Comeast maintains personally identifiable information about you in our regular business records while you are a subscriber to the Service. We also maintain this information for a period of time after you are no longer a subscriber if the information is necessary for the purposes for which it was collected or to satisfy legal requirements. These purposes typically include business, legal, or tax purposes. If there are no pending requests, orders, or court orders for access to this personally identifiable information, we will destroy the information after it is no longer necessary for the purposes for which it was collected.

(Emphasis Added).

18. On July 27, 2005, Petitioner filed an abuse report with Comcast relating to the

posting by sending an e-mail to abuse@comcast.net.

On August 15, 2005, Petitioner spoke with Rosemary Pierce of the Comcast

legal department, who advised him that Comcast retains user information for brief periods of

time (sometimes as low as thirty days), absent a pending request for a court order.

20. Also on August 15, 2005, Petitioner, using a pseudonym Finman264@aol.com,

sent the following e-mail to Sandworm77@Comcast.net, a contact address commonly used by

Mr. Ross in his promotion of his "Speed Seduction" product (offered through

http://www.seduction.com):

Subj: Does SS really work?

Date: 8/15/2005 3:36:26 PM Eastern Standard Time

From: Finman264

To: sandworm77@comcast.net

Ross.

I had some questions about SS but didn't want to ask on the newsgroups because of all

the noise.

7

Do you have some time to help answer them?

Thanks!

Finman

21. The purpose of the e-mail contact with <u>Sandworm77@comcast.net</u>, was to establish that the IP address from the USENET posting was identical to the one from the e-mail message, which it was, as the header information from the following reply e-mail indicates:

Return-Path: <sandworm77@comcast.net>

Received: from rly-yi06.mx.aol.com (rly-yi06.mail.aol.com [172.18.180.134]) by air-yi02.mail.aol.com (v107.10) with ESMTP id MAILINYI24-7d94301225a114; Mon. 15 Aug 2005 19:16:47 -0400

Received: from seermhc14.comcast.net (seermhc14.comcast.net [204.127.202.59]) by rly-yi06.mx.aol.com (v107.10) with ESMTP id MAILRELAYINYI63-

7d94301225a114; Mon, 15 Aug 2005 19:16:43 -0400

Received: from [24.126.247.39] (c-24-126-247-

39.hsd1.ca.comcast.net[24.126.247.39])

by comcast.net (sccrmhc14) with SMTP

id <2005081523164201400k46oie>; Mon, 15 Aug 2005 23:16:42 +0000

User-Agent: Microsoft-Entourage/10.1.6.040913.0

Date: Mon, 15 Aug 2005 16:16:41 -0700

Subject: Re: Does SS really work?

From: Ross Jeffries <sandworm77(a)comcast.net>

To: <Finman264@aol.com>

Message-ID: <BF267069.1603A%sandworm77@comcast.net>

In-Reply-To: <59.2db023ad.303256ca@aol.com>

Mime-version: 1.0

Content-type: text/plain; charset="US-ASCII"

Content-transfer-encoding: 7bit X-AOL-IP: 204.127.202.59

X-AOL-SCOLL-SCORE: 0:2:442554629:15032385

 $X\text{-}AOL\text{-}SCOLL\text{-}URL_COUNT\text{: }0$

Subj: Re: Does SS really work?

Date: 8/15/2005 6:16:47 PM Eastern Standard Time

From: sandworm77@comcast.net

To: Finman264@aol.com

Sent from the Internet (Details)⁴

> Ross.

>

> I had some questions about SS but didn't want to ask on the newsgroups

> because of all the noise.

> Do you have some time to help answer them?

>

> Thanks!

⁴ In electronic form, AOL separates the header information in the "details" link provided here.

> Finman

>

Sure. Fire away

- 22. Names and addresses of expected adverse parties: Petitioner will not know with any certainty, the name of the John Doe, until this information is provided by Comcast (not an expected party, but possibly a party to a future action based on this conduct if it does not cease and desist), pursuant to court-ordered discovery by deposition and/or subpoena. Comcast's address for service is 1500 Market Street, Philadelphia, PA 19102. As pursuant to federal precedent, Comcast will notify the John Doe of the pending subpoena and give him the opportunity to respond to it. No amount of due diligence could possibly uncover the Doe's identity with any evidentiary certainty.
- 23. <u>Names and addresses of persons to be examined</u>. The testimony will be conducted by deposition of Comcast, most likely its Custodian Of Records, or otherwise through the deposition of whichever officer Comcast designates as having the relevant knowledge.

 Comcast's address for service is 1500 Market Street, Philadelphia, PA 19102.
- 24. Petitioner would be prejudiced to the point of not knowing where to file the action, absent the knowledge of where the Doe user resides and/or conducts his business (if applicable).

REQUEST FOR RELIEF

Petitioner seeks the following relief:

1. An order granting Petitioner the right to depose Comcast, preferably by written interrogatories, and accompanied by a subpoena pursuant to Federal Rule 45, for the purpose of obtaining and authenticating the identity of the Comcast user who posted the message set forth in paragraph 9) above.

2. A protective order pursuant to Rule 26 requiring Comcast to preserve all evidence in its possession relating to the message in controversy in this Petition, including but not limited to preserving a copy of the message as it appeared on their server.

3. A protective order enjoining Comcast from destroying any evidence relating to the user who posted the message in controversy in this Petition.

4. **An immediate or expedited ruling or hearing** on this Petition, due to the perishable nature of the evidence.

An appropriate form of order, along with a Memorandum, which is incorporated by reference as if fully set forth verbatim herein, is attached.

This the 17th day of August, 2005.

Gordon Roy Parker Petitioner, Pro Se

4247 Locust Street, #806 Philadelphia, PA 19104

(215) 386-7366

GordonRoyParker@aol.com

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IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA

GORDON ROY PARKER, a.k.a. Ray Gordon, d/b/a Snodgrass Publishing Group,

4247 Locust Street, #806 Philadelphia, PA 19104

Petitioner.

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CASE NO .: 1)5mc/57

Petitione

Miscellaneous Case

Comcast High-Speed Internet, 1500 Market Street, Philadelphia, PA 19102, and John Doe, a/k/a Sandworm77@comcast.net, a/k/a Paul Ross, 310 Tahiti Way, Marina Del Ray, CA, 90292-6789

V.

Respondent

PETITIONER'S MEMORANDUM IN SUPPORT OF PETITION TO PERPETUATE TESTIMONY PURSUANT TO FEDERAL RULE 2

Gordon Roy Parker, Petitioner in the above-styled action, submits this Memorandum support of the above-referenced Petition.

MICHAELE.

BACKGROUND/BASIC FACTS

On July 27, 2005, a message was posted to the alt.seduction.fast ("ASF") newsgroup on USENET by the John Doe user of Comcast High-Speed Internet ("Comcast") named as a Respondent. In the message, the author claimed that Petitioner had sent a threatening e-mail on June 21, 2005 to one "Jeri Ryan," alleged to be the "widow" of a man named "John C. Ryan," who was alleged to have "died in a car accident" a few years back, shortly after they married. Petitioner has reason to believe that "Jeri Ryan" in fact never existed. Regardless, he never sent the e-mail in controversy, and Respondent Doe had no good faith reason to believe that he did.

On July 27, 2005, Petitioner e-mailed an abuse report to Comcast, noting the defamatory nature of the posting, and demanding the preservation of evidence. This demand,

however, does not carry the weight of a court order. The abuse report is attached hereto as exhibit A.

On August 15, 2005, Petitioner contacted Rosemary Pierce of the Comcast legal department, and was told that he would have to seek a court order such as with this Petition in order to have the evidence preserved. Petitioner then faxed a second Demand For Preservation of Evidence, which is attached hereto as Exhibit B.

Also on August 15, 2005, as set forth in the Petition, Petitioner contacted Sandworm77@comcast.net. That evening, he received a reply e-mail (also outlined in the Petition) which came from the same IP address as the USENET posting, which indicates that the Sandworm77 user is the same individual who posted the message to USENET. Those e-mails, with full header information, are included in the Petition.

LEGAL STANDARD

Federal Rule of Civil Procedure 27(a)(1) states the following:

A person who desires to perpetuate testimony regarding any matter that may be cognizable in any court of the United States may file a verified petition in the United States district court in the district of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: 1) that the petitioner expects to be a party to an action cognizable in a court of the United States but is presently unable to bring it or cause it to be brought. 2) the subject matter of the expected action and the petitioner's interest therein. 3) the facts which the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it, 4) the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known, and 5) the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to clicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition. for the purpose of perpetuating their testimony.

Unlike other discovery rules, Rule 27(a) allows a party to take depositions *prior* to litigation if it demonstrates an expectation of future litigation, explains the substance of the testimony it expects to elicit and the reasons the testimony is important, and establishes a risk

that testimony will be lost if not preserved. <u>See The Penn Mutual Life Insurance Company</u>, et al. v. United States of America, DC App. #94-5280.

Rule 27 is not substitute for discovery, and is available in special circumstances to preserve testimony which could otherwise be lost. See Ash v. Cort, 512 F.2d 909, 912 (3d Cir. 1975). Such a general allegation is not sufficient to satisfy Rule 27's requirement that a petitioner demonstrate an immediate need to perpetuate testimony. Id.

ARGUMENT

The need for this Petition should be clear to this Court, given the circumstances of this case.

A. <u>Prefiling Discovery Is Necessary For Petitioner To Bring A Lawsuit In A</u> United States Court Without Subjecting Petitioner To Undue Prejudice.

A lawsuit cannot be served until a Defendant has been named. It also cannot be filed in the proper jurisdiction without the (internet) Defendant being known. In this case, Petitioner cannot ascertain the identity of the Doe, and therefore cannot possibly know the jurisdiction in which he needs to file suit. Unlike other "John Doe" lawsuits, where jurisdiction is not an issue, Plaintiffs in internet John Doe cases are unduly prejudiced by not knowing where to file suit, and are often forced to withdraw a case from one jurisdiction and refile in another simply because they did not avail themselves of prefiling discovery pursuant to Federal Rule 27.

B. Petitioner Has Set Forth Facts Sufficient To Justify Prefiling Discovery.

In <u>Columbia Insur. Co. v. Seescandy.com</u>, 185 F.R.D. 573, 577 (N.D.Ca. 1999), that court set forth a four-part test for determining whether preliminary (prefiling or pre-service) discovery was justified. (1) identify the missing party with sufficient particularity for the Court to determine that the defendant is a real person or entity who could be sued in federal court; (2) identify all previous steps taken to locate the missing party; (3) prove that an act giving rise to

civil liability actually occurred and that the discovery will identify the person who committed the act; (4) provide the Court with a statement of reasons justifying the specific discovery requested. *Id.* at 578-80.

In this case, Petitioner has shown that 1) the Doe is a real person who can be sued in court (the Comcast user); 2) no other steps to identify the Doe are possible, because the only reliable evidence of his or her identity can be obtained from the ISP, in this case Comcast; 3) under the "most favorable light" standard granted Petitioner, the act of defamation has occurred, which gives rise to civil liability for the Doe user; and 4) Petitioner has set forth the reasons why this specific discovery must be conducted, the most compelling of which is the imminent and ongoing possibility that the evidence could be destroyed by Comcast.

Comcast's information retention policy states that, absent a court order, they are free to destroy subscriber information. The Cable Act states that they are actually *required* to do so, under 47 USC §551(e), which states:

A cable operator shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection (d) of this section or pursuant to a court order. (emphasis added). Even without that requirement, ISPs routinely purge IP history logs and newsgroup messages from their servers, which creates a compelling need to secure the evidence and facts related thereto prior to any destruction.

Even if this court were to apply the more stringent requirement of a showing of harm, the nature of the allegation (that Petitioner had threatened "Jeri Ryan" with an e-mail when in fact he never did so) constitutes a *prima facie* showing of harm, as the statements are libelous per se, with harm occurring upon publication.

⁵ In <u>Parker v. Rodwell</u> (Phila. CCP #02-1828, Feb. Term 2002), Plaintiff sued Keith Alan Rodwell of Massachusetts over postings which were signed with the e-mail address of <u>KR@KR.com</u>. Mr. Rodwell claimed that the postings were a forgery and were not his, despite his owning the "KR.com" domain. To hold otherwise in this or any other case would open the floodgates for mistaken-identity litigation, and even malicious attempts to cause third parties to be sued by anonymous internet posters who could impersonate them.

C. Petitioner Has Set Forth, With Specificity, The Facts He Seeks To Establish

Petitioner has set forth, with sufficient specificity, the facts he seeks to establish, namely the identity of the Doe user, and the fact that the Doe was connected to the internet via the IP address listed in the USENET message during the time it was posted, and that the poster is indeed Sandworm77@comcast.net. These facts are necessary for Petitioner to prepare and file his lawsuit without burden or prejudice.

D. The Cable Act Requires A Court Ordered Subpoena

47 USC §551(c)(1) states that

"Except as provided in paragraph (2), a cable operator shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator."

47 USC §551(c)(2)(C) states that:

A cable operator may disclose such information if the disclosure is... subject to subsection (h) of this section, made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed

In <u>Parker v. Learn The Skills Corp. et al.</u> (E.D.Pa. 03-cv-6936), Petitioner sought John Doe discovery from RoadRunner Internet in Virginia (citation of misc. case omitted), and was informed that RoadRunner would not comply unless the subpoena was court-ordered because of the Cable Act. That subpoena was decided on other grounds (Petitioner was unaware that the N.D.Va. Local Rules required pro se litigants to seek leave of the court before issuing a subpoena).

E. The Evidence Is Highly Perishable, Crucial To The Case, And The Chance It Will Be Lost Is Severe.

As set forth above, and as is the case with most internet lawsuits, evidence is difficult to preserve because it is often out of the control of even the ISP or webhost. Users

can delete their accounts, their websites, or even their newsgroup postings in some cases. They can provide false information to ISPs, or use "chained ISPs" designed to send plaintiffs on a "wild goose chase" designed to make service difficult or even impossible. They sometimes link their chains through foreign lands, thus consuming more time and resources.

Without question, the ideal operating procedure for an internet Plaintiff is to resolve these issues through prefiling discovery and testimony pursuant to Rule 27.

CONCLUSION

All of the required elements for an order authorizing the perpetuation of prefiling testimony are unquestionably present. For those reasons, as set forth throughout this Petition and Memorandum, the relief sought should be **granted**. An appropriate form of order is attached.

This the 17th day of August, 2005.

Gordon Roy Parker Petitioner, Pro Se

4247 Locust Street, #806 Philadelphia, PA 19104

Soull Mulel

(215) 386-7366

GordonRoyParker@aol.com

IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA

GORDON ROY PARKER, a.k.a. Ray Gordon, d/b/a : Snodgrass Publishing Group, : : 4247 Locust Street, #806 : Philadelphia, PA 19104 CASE NO .: () 5 mc 157 Petitioner, V. Miscellaneous Case Comcast High-Speed Internet, 1500 Market Street, Philadelphia, PA 19102, and John Doe, a/k/a : Sandworm77@comcast.net, a/k/a Paul Ross, 310 Tahiti : Way, Marina Del Ray, CA, 90292-6789 : Respondent

VERIFICATION

I, Gordon Roy Parker, an adult male domiciled at the address listed in the caption, hereby attest and swear, under penalty of perjury, that all averments and other statements of facts in this **Petition To Perpetuate Testimony Pursuant To Federal Rule 27** and accompanying Memorandum in Support are true and correct, to the best of my knowledge and belief.

This the 17th day of August, 2005.

Gordon Roy Parker Petitioner, Pro Se 4247 Locust Street, #806

Com hen Park

Philadelphia, PA 19104

(215) 386-7366

GordonRoyParker@aol.com

Exhibit A Abuse Report of July 27, 2005

Subj: USENET Abuse: Demand for Preservation of Evidence

Date: 7/27/2005 1:32:02 AM Eastern Standard Time

From:LeModernCaveman To: abuse@comcast.net CC: ray@cybersheet.com

Dear Comcast Abuse:

Please retain all evidence relating to this internet posting and its author indefinitely, pursuant to Federal Rule 37. currently have a lawsuit pending against the author of the message (Parker v. LTSC, E.D.Pa. #05-cv-2752). I may also be filing a private criminal complaint regarding this post.

The alleged e-mail from me is fraudulent and was never sent by me. It is an attempt to defame me and incite others to harass me. Please be advised that I fear for my safety as a direct consequence of this lie.

Your assistance is appreciated.

Sincerely

Gordon Roy Parker a/k/a "Ray Gordon"

Path: twister.nyc.rr.com!cyclone.rdc-

nyc.rr.com!news.maxwell.syr.edu!newscon02.news.prodigy.com!newscon06.news.prodigy.com!prodigy.net!border 1.nntp.dca.giganews.com!nntp.giganews.com!local01.nntp.dca.giganews.com!nntp.comcast.com!news.comcast.com .POSTED!not-for-mail

NNTP-Posting-Date: Wed, 27 Jul 2005 01:04:43 -0500 User-Agent: Microsoft-Entourage/10.1.6.040913.0

Date: Tuc, 26 Jul 2005 23:04:40 -0700 Subject: Re: "Jack Ryan" never existed From: Ross <notmyemail@address.com>

Newsgroups: alt.seduction.fast

Message-ID: <BF0C7208.15265%notmyemail@address.com>

References: <osyFe.3500\$Ow4.1455136@twister.nyc.rr.com> <INF1GX5238560.4338078704@reece.net.au>

Mime-version: 1.0

Content-type: text/plain; charset="US-ASCII"

Content-transfer-encoding: 7bit

Lines: 102

NNTP-Posting-Host: 24.126.247.39

X-Trace: sv3-

u515yyp2uGexleBROdhxcvXSM9WKYNcV5rXQtZcTNIK78kIC4svJ/ADKlaiygI4GPwqzL6Rs!m4k11hE=

X-Complaints-To: abuse@comcast.net

X-DMCA-Complaints-To: dmca@comcast.net

X-Abuse-and-DMCA-Info: Please be sure to forward a copy of ALL headers

X-Abuse-and-DMCA-Info: Otherwise we will be unable to process your complaint properly

X-Postfilter: 1.3.31

Xref: cyclone.rdc-nyc.rr.com alt.seduction.fast:206072

in article INF1GX5238560.4338078704@recce.net.au, EditorialStaff at Use-Author-Address-Header@[127.1] wrote on 7/26/05 7:24 PM:

I swear to Jeri; if Mr. Parker DOES sue me, he will be reading this piece of sick, twisted, hateful email that he sent, into the record when I take his deposition.

Ray, you are sick, twisted, evil bastard and I am going to clean your clock in court.

RJ

```
> Gordon Roy Parker wrote:
>> He was just a convenient diversion created by someone
>> who didn't want to take credits for the threats that
>> were made under that name.
> We received an interesting email a few days ago, from someone
> who was connected to Dr. Ryan, and with that person's permission,
> we post it here, so that everyone will know just what Mr. Parker
> is attempting to do here.
> X-Apparently-To: jerisnow@****.com
> X-Date: Tue, 21 June 2005 01:32:39 -0500
> X-Originating-IP: [24.193.236.213]
> Return-Path: <ray@cybersheet.com>
> Authentication-Results: mta221.mail.dcn****.com
> from=twister.nyc.rr.com 1119348282 24.193.236.213
> (Tue, 21 Jun 2005 06:04:42 EDT)
> Received: from 24.193,236.213 by mta221.mail.dcn.****.com with
> SMTP: Tue, 26 Jul 2005 18:32:39 -0700
> Received: from ([24.193.236.213]) by
> omta03sl.mx.bigpond.com with SMTP id
> <20050727013237.WFYU21373.omta03sl.mx.bigpond.com@workshop>:
> Wed, 27 Jul 2005 01:32:37 +0000
> To: jerisnow@****.com
> From: "Ray Gordon" <ray@cybersheet.com>
> Date: 21 Jun 2005 01:33:10 -0000
> Mcssage-ID: <DGOJ7MAE38560.3980324074@twister.nyc.rr.com>
> Subject: You had better watch out BITCH.....
> I'm tired of all the men who are attacking me in your name
> and with your approval, and I am going to fix your CUNT ass soon.
> You had better watch out, because I am going to come and find you.
> and show you what I think of you and your dead husband.
> Georgia is only a plane ride away......
> You think you can get away with harassing me, threatening me and
> hiding behind that dead asshole husband of yours, but you
> can't. Your husband was a rapist, and you are nothing but a SLUT for
> having married a player like him. Your actions show your poor
> judgment picking men, and they reveal you to be a PATHETIC little
> SLUT the world would definitely be better off without.
> If I ever hear another word about "Jack Ryan" ever again, I am
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> going to shut up that mouth of yours, and the pussy mouth of everyone
> who you have gotten to attack me. He's DEAD, rotting in a grave.
> and the worms are eating up all you love. That make you feel good
> CUNT? I hope so.
> Women like you NEVER find good men. All SLUTS like you can get are
> players and rapists. There's a reason for that.
> I am hereby officially warning you that any more attacks on me will
> cause great harm to come down on you. You have been warned. Cease and
> Desist IMMEDIATELY....
> Ray Gordon
> We wonder what could be done about this? We do know that an attorney
> representing the person in question has contacted law enforcement in
> Philadelphia, in an attempt to forestall this kind of behavior in the
> future. We wonder if it won't take more than that. Perhaps someone
> actually paying a visit to Philadelphia to explain the consequences
> for actions like this, in person...
> We are watching this situation, very carefully.
>
> --
> The Editorial Staff
> A quote from Gordon Roy Parker, AKA "Ray Gordon":
> "(For a dissenting opinion on my character, please visit
> the following website: http://members.tripod.com/~rayfaq.html)*
> This site contains many lies about me, but as a defender of
> free speech I fully support its right to exist."
> -Message-ID: <6ertau$76b$1@nnrp1.dejanews.com>
 > *The original RayFAQ was removed from the internet as a
 > result of dozens of complaints from Gordon Roy Parker.
 > Freedom of Speech is WORTHLESS without Social Responsibility.
 >
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Exhibit B Letter To Comcast, August 15, 2005

4247 Locust Street, #806 Philadelphia, PA 19104 (215) 386-7366 GordonRoyParker@aol.com

August 15, 2005

Via Facsimile to 215-320-3572 And Process Server

Ms. Rosemary Pierce Comcast Legal Department 1500 Market Street, 25th Floor Philadelphia, PA 19104

Re: Demand For Preservation Of Evidence Pursuant To Federal Rule 37

Dear Ms. Pierce:

Pursuant to our telephone conversation of this morning, I am faxing you this Demand For Preservation of Evidence pursuant to Federal Rule 37 regarding an internet posting made to the alt.seduction.fast ("ASF") USENET internet newsgroup on July 27, 2005. As I will be filing a "Rule 27" petition for prefiling discovery with the Eastern District of Pennsylvania this week, and using a process server to serve that Petition on Comcast, I will include a hard copy of this letter with the service. Under Federal Rule 37, destruction of evidence once a party has been served notice that they have evidence relating to federal litigation can result in sanctions.

I have been made aware by you that you preserve certain information regarding your users for periods as brief as 30 days, so it is extremely important that this evidence not be lost.

I am requesting that you preserve the following evidence for retrieval, and keep it preserved for a period of not less than four years:

- 1. The identity of the Comcast user who was assigned the IP address of 24.126.247.39 on the date and time that the message was posted (Tue, 26 Jul 2005 23:04:40 -0700). (NOTE: this IP address has been used by this user since at least June 20, 2005, according to other internet postings by the same individual).
- 2. An electronic copy and printout of the actual message as it appeared on your news servers (to further document its existence). A copy of the message as it appeared on the internet appears below in this letter.
- 3. Any e-mails still in Comcast's possession which were sent from the IP address of **24.126.247.39** by the same user who posted the USENET message.

The message in controversy, which contains a fraudulent claim that I had sent a threatening e-mail to a woman, appears following my signature.

Please contact me immediately by telephone if you have any questions or need further assistance. Your cooperation is appreciated.

Sincerely,

Gordon Roy Parker

Goodin Ry Peter

Path: twister.nyc.rr.com!cyclone.rdc-

nyc.tr.com! news.maxwell.syr.edu!newscon02.news.prodigy.com! newscon06.news.prodigy.com! prodigy.com! newscon06.news.prodigy.com! newscon06.news.prodigy.com! prodigy.com! newscon06.news.prodigy.com! newscon06.news.prodigy.com.prodigy.com.prodigy.com.prodigy.com.prodigy.pry.net!border1.nntp.dca.giganews.com!nntp.giganews.com!local01.nntp.dca.giganews.com!nntp.comeas

t.com!news.comcast.com.POSTED!not-for-mail

NNTP-Posting-Date: Wed, 27 Jul 2005 01:04:43 -0500 User-Agent: Microsoft-Entourage/10.1.6.040913.0

Date: Tue, 26 Jul 2005 23:04:40 -0700 Subject: Re: "Jack Ryan" never existed From: Ross <notmyemail@address.com>

Newsgroups: alt.seduction.fast

Message-ID: <BF0C7208.15265%notmyemail@address.com> References: <osyFe.3500\$Ow4.1455136@twister.nyc.rr.com>

<INF1GX5238560.4338078704@reece.net.au>

Mime-version: 1.0

Content-type: text/plain; charset="US-ASCII"

Content-transfer-encoding: 7bit

Lines: 102

NNTP-Posting-Host: 24.126.247.39

X-Trace: sv3-

QqWENF9YIJpIFLcSp+5+b6maQm6rEiPuZxHEDPL63t8SnGy+Zxzx0YCiXcQ6sV8+LHFL6pyXmy zL6Rs!m4k11hE=

X-Complaints-To: abuse@comcast.net

X-DMCA-Complaints-To: dmca@comcast.net

X-Abuse-and-DMCA-Info: Please be sure to forward a copy of ALL headers

X-Abuse-and-DMCA-Info: Otherwise we will be unable to process your complaint properly

X-Postfilter: 1.3.31

Xref: cyclone.rdc-nyc.rr.com alt.seduction.fast:206072

in article INF1GX5238560.4338078704@recce.net.au, EditorialStaff at Use-Author-Address-Header@[127.1] wrote on 7/26/05 7:24 PM:

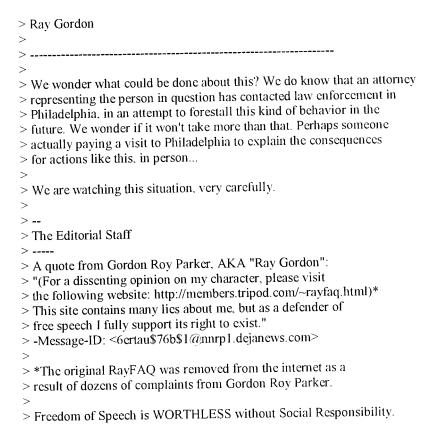
I swear to Jeri; if Mr. Parker DOES sue me, he will be reading this piece of sick, twisted, hateful email that he sent, into the record when I take his deposition.

Ray, you are sick, twisted, evil bastard and I am going to clean your clock in court.

RJ

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>> He was just a convenient diversion created by someone
>> who didn't want to take credits for the threats that
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> X-Apparently-To: jerisnow@**** com
> X-Date: Tue, 21 June 2005 01:32:39 -0500
> X-Originating-IP: [24.193.236.213]
> Return-Path: <ray@cybersheet.com>
> Authentication-Results: mta221.mail.dcn****.com
> from=twister.nyc.rr.com 1119348282 24.193.236.213
   (Tue, 21 Jun 2005 06:04:42 EDT)
> Received: from 24.193.236.213 by mta221.mail.dcn.****.com with
> SMTP; Tue, 26 Jul 2005 18:32:39 -0700
> Received: from ([24.193.236.213]) by
> omta03sl.mx.bigpond.com with SMTP id
    <\!\!20050727013237.WFYU21373.omta03sl.mx.bigpond.com@workshop\!\!>;
> Wed, 27 Jul 2005 01:32:37 +0000
> To: ierisnow@****.com
> From: "Ray Gordon" <ray(a)cybersheet.com>
> Date: 21 Jun 2005 01:33:10 -0000
> Message-ID: <DGOJ7MAE38560.3980324074@twister.nyc.rr.com>
> Subject: You had better watch out BITCH.....
>
> I'm tired of all the men who are attacking me in your name
> and with your approval, and I am going to fix your CUNT ass soon.
> You had better watch out, because I am going to come and find you,
> and show you what I think of you and your dead husband.
 > Georgia is only a plane ride away......
 > You think you can get away with harassing me, threatening me and
 > hiding behind that dead asshole husband of yours, but you
 > can't. Your husband was a rapist, and you are nothing but a SLUT for
 > having married a player like him. Your actions show your poor
 > judgment picking men, and they reveal you to be a PATHETIC little
 > SLUT the world would definitely be better off without.
 > If I ever hear another word about "Jack Ryan" ever again, I am
 > going to shut up that mouth of yours, and the pussy mouth of everyone
 > who you have gotten to attack me. He's DEAD, rotting in a grave.
 > and the worms are eating up all you love. That make you feel good
 > CUNT? I hope so.
 > Women like you NEVER find good men. All SLUTS like you can get are
 > players and rapists. There's a reason for that.
 > I am hereby officially warning you that any more attacks on me will
 > cause great harm to come down on you. You have been warned. Cease and
 > Desist IMMEDIATELY....
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IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA

GORDON ROY PARKER, a.k.a. Ray Gordon, d/b/a Snodgrass Publishing Group, 4247 Locust Street, #806 Philadelphia, PA 19104 Petitioner, v. Comcast High-Speed Internet, 1500 Market Street, Philadelphia, PA 19102, and John Doe, a/k/a		CASE NO.: 05mc 57 Miscellaneous Case
Sandworm77@comcast.net, a/k/a Paul Ross, 310 Tahiti Way, Marina Del Ray, CA, 90292-6789 Respondent	:	
Response		

CERTIFICATE OF SERVICE

I, Gordon Roy Parker, Petitioner in the above-styled action, hereby certify that I have served a true and correct copy on Respondents by certified priority mail, as follows:

Comcast 1500 Market Street, 25th Floor Philadelphia, PA 19102, <u>Attn</u>: Rosemary Pierce, Legal Dept. Paul Ross 310 Tahiti Way, Marina Del Ray, CA, 90292-6789

I further certify that I will be contracting a process server to make personal service on Comcast, and will file an amended or supplemental Certificate once such service has been completed.

This the 17th day of August, 2005.

Gordon Roy Parker Petitioner, Pro Se 4247 Locust Street, #806 Philadelphia, PA 19104 (215) 386-7366